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Attorney for Plaintiff/Appellee

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON

In re)	
Ronald D. Joling and)	Case No. 6:14-cv-00404-AA
Dorothea J. Joling,)	
)	
Debtors.)	
_____)	
Joseph M. Charter,)	Bank. Case No. 11-66166-fra7
)	
Plaintiff,)	Adv. Proc. No. 12-06043-fra
)	
vs.)	
Antioch Ministries,)	MOTION TO DISMISS
)	APPEAL
Defendant.)	
_____)	

Joseph M. Charter, plaintiff/appellee herein, moves that the appeal be dismissed.
 This motion is based on the following Memorandum.

By: /s/ David B. Mills
 David B. Mills, OSB # 77281
 Attorney for Trustee/Plaintiff/Appellee

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3 **MEMORANDUM**

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5 On December 2, 2013 defendant Antioch Ministries filed a Motion for Relief from
6 Declaratory Judgment [Docket #34]. The Order Denying Motion for Relief from
7 Declaratory Judgment [Docket #42] was filed on January 10, 2014. Any appeal from that
8 Order had to be filed no later than January 24, 2014. BR 8002.

9 The debtors filed on January 27, 2014 what has been captioned in part “Notice of
10 Appeal”[Docket #44]. No appeal has been filed by Antioch Ministries. The debtors are
11 not parties to this adversary proceeding.

12 In *In re Mouradick*, 13 F.3d 326, 327 (9th Cir. 1994) the Ninth Circuit Court of
13 Appeals held:

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15 The provisions of Bankruptcy Rule 8002 are jurisdictional; the untimely filing of a
16 notice of appeal deprives the appellate court of jurisdiction to review the
17 bankruptcy court's order. *Matter of Mullis*, 79 B.R. 26, 27 (D.Nev.1987), citing, *In*
18 *re Souza*, 795 F.2d 855, 857 (9th Cir.1986); *Matter of Ramsey*, 612 F.2d 1220,
19 1222 (9th Cir.1980). “This rigid enforcement is justified by the ‘peculiar demands
20 of a bankruptcy proceeding,’ primarily the need for expedient administration of the
21 Bankruptcy estate aided by certain finality of orders issued by the Court in the
22 course of administration.” *In re Nucorp Energy, Inc.*, 812 F.2d 582, 584 (9th
23 Cir.1987), quoting, *Matter of Thomas*, 67 B.R. 61, 62 (Bankr.M.D.Fla.1986).

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25 Pursuant to Bankruptcy Rule 8002(a), Anderson's notices of appeal were due on or
26 before August 31, 1991-ten days from the date the bankruptcy court denied his
27
28

1 administrative claims. However, under Bankruptcy Rule 8002(c), a motion to
 2 extend the time for filing a notice of appeal made no more than twenty days after
 3 the expiration of the ten day period may be granted upon a showing of excusable
 4 neglect. *In re Martinez*, 97 B.R. 578, 579 (9th Cir. BAP 1989), affirmed by,
 5 *Martinez v. Peelle Financial Corp.*, 919 F.2d 145 (9th Cir.1990).¹

6
 7 The timely filing of a notice of appeal is jurisdictional. Here, defendant failed to timely
 8 file the notice of appeal and the appeal must be dismissed. The Bankruptcy Appellate
 9 Panel noted that deficiency (See attached Notice) and invited the appellant to respond. No
 10 response was made.

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 12 By: /s/ David B. Mills
 13 David B. Mills, OSB # 77281
 14 Attorney for Trustee/Plaintiff/Appellee

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 26 ¹The case was decided before the amendments to BR 8002 which extended the deadline
 27 for a notice of appeal from 10 to 14 days and the deadline for a motion to extend from 20 to 21.

**U.S. Bankruptcy Appellate Panel
of the Ninth Circuit**

125 South Grand Avenue, Pasadena, California 91105
Appeals from Central California (626) 229-7220
Appeals from all other Districts (626) 229-7225

To: Dorothea J. Joling
56891 Fat Elk Road
Coquille, OR 97423
To: Ronald D. Joling
56891 Fat Elk Road
Coquille, OR 97423

Date: February 13, 2014

Case Name: RONALD D. JOLING AND
DOROTHEA J. JOLING

BAP No: OR-14-1043

Bankruptcy No: 11-66166-fra7

Adversary No: 12-06043

Subject: NOTICE OF DEFICIENT APPEAL AND IMPENDING DISMISSAL

YOU MUST FILE A RESPONSE TO THIS NOTICE WITH THE BAP CLERK'S OFFICE
WITHIN FOURTEEN DAYS OR YOUR APPEAL MAY BE DISMISSED.

A review of the documents in this appeal reveals a deficiency which could result in dismissal.
This appeal appears to be defective for the following reasons:

LACK OF JURISDICTION OF THE BANKRUPTCY APPELLATE PANEL

The Notice of Appeal was filed beyond the FOURTEEN (14) day time period allowed by Fed.
R. Bankr. 8002, 8019 In re Slimick, 928 F.2d 304, 306 (9th Cir. 1990).

Date of entry of order being appealed: January 19, 2014

Date of filing the Notice of Appeal: January 27, 2014

You must file with the BAP and serve on all parties to this appeal a legally-sufficient
explanation why this appeal should not be dismissed as untimely.

*Therefore, this appeal may be **DISMISSED** unless, within **FOURTEEN (14) days** of this notice, the Appellant provides an adequate legal explanation as to why the appeal should not be dismissed. All responses should be provided in the form of an original and 3 copies with proof of service on opposing counsel.*

cc: All other parties

CERTIFICATE OF MAILING

The undersigned, deputy clerk of the U.S. Bankruptcy Appellate Panel of the Ninth Circuit, hereby certifies that a copy of the document on which this certificate appears was transmitted this date to all parties of record to this appeal.

By: Patti Ippolito, Deputy Clerk

Date: February 13, 2014

In re Charter v. Antioch Ministries

USDC Case No. 6:14-cv-00404-AA

DATE: **March 17, 2014**

DOCUMENT: ***Motion to Dismiss***

CERTIFICATE OF SERVICE

Manual Notice List:

The attached document was mailed with postage pre-paid for First Class Mail service and deposited with the US Postal Service at Eugene, Oregon, on the date listed above to the following:

Antioch Ministries
c/o Ronald and Dorothea Joling
56891 Fat Elk Rd
Coquille, OR 97423

Ronald D. Joling
56891 Fat Elk Rd
Coquille, OR 97423

Dorothea J. Joling
56891 Fat Elk Rd
Coquille, OR 97423

Electronic Mail Notice List:

The attached document will be electronically mailed via ECF to the following:

David B. Mills

/s/ David B. Mills
By: _____
David B. Mills, OSB # 77281
Attorney for Plaintiff/Appellee